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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,416	03/30/2004	Russell Berger	S014 P00869-US2	4774

3017 7590 10/18/2004

BARLOW, JOSEPHS & HOLMES, LTD.
101 DYER STREET
5TH FLOOR
PROVIDENCE, RI 02903

EXAMINER

CAMPBELL, THOR S

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/813,416	Applicant(s) BERGER, RUSSELL	
	Examiner Thor S. Campbell	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-19 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-12 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Neidnig (US 2617916).

Neidnig discloses a warming apparatus comprising a panel of expandable material; a plurality of heating elements, having free ends, attached to the stretchable material', means for interconnecting the heating elements to a power supply to heat up the heating elements, wherein the panel of expandable material is formed into a tube, wherein the panel of expandable material is formed into a tube having a top opening and a bottom opening, wherein the heating elements include electrically resistive material, and further wherein the free ends of the heating elements are tapered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neidnig.

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Neidnig discloses the claimed invention except the specific use of polyester and neoprene as the materials. Neidnig discloses that the layers 12 and 13 can be of any suitable flexible material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyester and neoprene, since it has been held to be within the general skill or a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. As evidence of the suitability of polyester and neoprene for use in heating pads, Anabtawi et al. (US 4810859) discloses the use of neoprene as a base layer for a heating device, and Zhao et al. (US 6392195) discloses the use of polyester for use as an outer cover for a heating pad.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neidnig in view of Williams et al. (US 5981910).

Neidnig discloses the claimed invention except the closing of the bottom opening with neoprene. Williams discloses a heating device having a tubular shape with a top and bottom opening wherein the bottom opening is closed by another fabric piece. It would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Williams to modify the device of Neidnig to include an attachable bottom cap of neoprene to close the tubular shape of the Neidnig device in order to allow the heating pad to have yet another configuration of use capable of heating a vessel as is suggested by Williams.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neidnig.

Neidnig discloses the claimed invention except the use of a cigarette lighter for supplying power to the heating elements and the heating elements being secured to the heating pad with a zig-zag stitch. It is noted that the use of cigarette lighters are commonly used to power such

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devices, and that heating wires are typically affixed to the heating pad using zig-zag stitching. Official Notice is taken that the use of cigarette lighters for supplying power to the heating elements and the heating elements being secured to the heating pad with a zig-zag stitch is common knowledge in the art.

Allowable Subject Matter

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-19 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thor S. Campbell whose telephone number is 703-306-9042. The examiner can normally be reached on Tue-Fri 5:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


THOR CAMPBELL
PATENT EXAMINER